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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91173105
Party	Defendant Michael Dalton
Correspondence Address	Michael Dalton P.O. Box 18137 670 Northland Blvd. Cincinnati, OH 45218-0137 UNITED STATES DALTONME@hotmail.com
Submission	Motion to Strike
Filer's Name	Michael Dalton
Filer's e-mail	DALTONME@hotmail.com
Signature	/ Michael Dalton /
Date	03/10/2009
Attachments	StrikeMotionDalton.pdf (5 pages)(1618746 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Honda Motor Co. LTD	:	
	:	
Opposer	:	
	:	
vs.	:	Opposition No. 91173105
	:	
	:	
Michael Dalton	:	
	:	
Applicant	:	

**APPLICANT'S MOTION TO STRIKE OPPOSER'S ENTIRE
DISCOVERY DEPOSITION OF MICHAEL DALTON**

Now comes Defendant – Applicant, Michael Dalton, prior to his testimony period and hereby moves to strike Opposer's entire discovery deposition and all exhibits taken of Michael Dalton, on May 5, 2008 and entered for admission during Opposer's trial testimony period that opened on September 28, 2008 and closed on October 27, 2008 for failure to comply with the trademark rules of procedure.

The Opposer failed to provide the required reading within thirty days of taking the deposition and continued failing to provide the reading while submitting the transcript for admission during their testimony period. To this date, the applicant has not waived his right to reading and signature.

Therefore;

As a matter of law, pursuant to trademark rules, the applicant is entitled to have Opposer's entire discovery deposition testimony of Michael Dalton and accompanying exhibits stricken from the record.

The particulars fully presented in the following Memorandum in Support.

Memorandum in Support

Opposer has made no initial disclosures.¹

On May 05, 2008, Dalton appeared on Opposer's request for the taking of discovery deposition.

After the discovery deposition, Dalton was advised by the court reporter that she would notify him when the transcript was available for review and signature. Dalton advised the reporter that he did wish, in fact, to review the discovery testimony.

Dalton wasn't presented with his transcribed discovery deposition, anytime prior or during Opposer's testimony period and was, therefore, forbidden to carefully read over and sign in the presence of any officer authorized to administer oaths and Dalton hasn't waived signature², see exhibit 1.

As such, Dalton, rightfully, assumed that Opposer's intention was that they were not going to use his discovery deposition.

Dalton was not provided a copy of the discovery deposition within 30 days of taking and therefore did not have the deposition available for the filing of a summary motion prior to the Opposer's testimony period.³

Dalton has been unduly surprised, in that, Opposer now attempts to utilize the discovery deposition without the requested review and signature and Dalton was deprived

¹ Trademark rule 2.120(a)(2) and rule 2.123(e)(3)

² Trademark rule 2.120(j)

Trademark rule 2.120(j)(6) "*paragraph (j) of this section will not be interpreted to preclude reading...*"

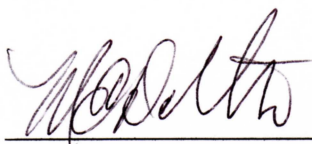
Trademark rule 2.123(e)(5)

³ Trademark rule 2.127(e)(1) and rule 2.127(e)(2)

of the deposition testimony, in a timely manner, for utilization for a motion for summary judgment prior to Opposer's testimony period.

As such, the applicant is entitled to have the entire discovery testimony, exhibits, and public reliance documents stricken from the record⁴.

Respectfully submitted,



Michael Dalton, pro se
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Certificate of Service

I, Michael Dalton, hereby certify that this Motion to Strike has been served by electronic email upon Opposor's council Dyan Finguerra-Ducharme, dyan.finguerra-ducharme@wilmarhale.com and standard U.S. mail upon Dyan Finguerra-DuCharme at Wilmer Cutler Pickering Hale and Dorr LLP, 399 Park Ave, New York, NY 10022 this 10 th day of March 2009.



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⁴ Trademark rule 2.123(l)

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Honda Motor Co. LTD

Opposer

vs.

Michael Dalton

Applicant

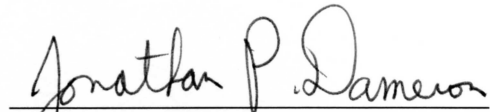
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Opposition No. 91173105

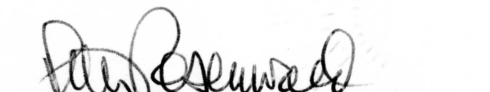
AFFIDAVIT OF JONATHAN P. DAMERON

Upon being first duly cautioned and sworn, Affiant states as follows:

1. I am an attorney licensed to practice in the State of Ohio and have been practicing law since 1991.
2. I assisted Applicant, Michael Dalton, at a deposition, in which Mr. Dalton was deposed by an attorney for Honda Motor Co., LTD.
3. I do not recall waiving Mr. Dalton's right to review and sign the deposition transcripts.
4. It was never my intent to waive Mr. Dalton's right to review and sign the deposition transcripts.
5. I do not recall signing any document.
6. I never said anything that would be remotely close to "Mr. Dalton waives his right to review and sign the transcripts."


Jonathan P. Dameron

Sworn to before me and subscribed in my presence this 25th day of November, 2008.


Notary Public

PETER ROSENWALD, Attorney at
Notary Public - State of Ohio
My commission has no expiration
Section 147.03 R. C.